

IN THE WATER COURT OF THE STATE OF MONTANA  
YELLOWSTONE DIVISION  
LITTLE MISSOURI RIVER BASIN ABOVE LITTLE BEAVER CREEK (39F)  
PRELIMINARY DECREE

\* \* \* \* \*

CLAIMANT: J & D Statham Real Estate, LLC

**CASE 39F-6001-A-2023**  
39F 175547-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

**MASTER'S REPORT**

FINDINGS OF FACT

1. J&D Statham Real Estate is the record owner of stock claim 39F 175547-00.
2. Claim 39F 175547-00 was decreed in the Preliminary Decree for Basin 39F

without DNRC issue remarks and no objections were filed.

3. Claim 39F 175547-00 was decreed with the point of diversion in the SESWNE of Section 11, Township 6 South, Range 59 East, Carter County; the place of use was decreed in the SESWSE of Section 11, Township 6 South, Range 59 East, Carter County.

4. On July 26, 2023, David Statham filed a Motion to Amend claim 39F 175547 on behalf of Claimant J&D Statham Real Estate. The Motion to Amend indicates the following:

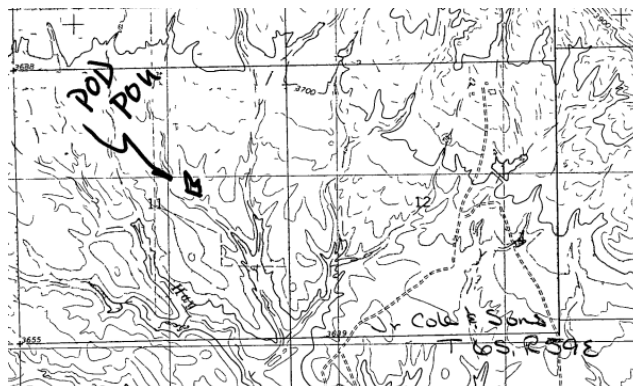
The place of use needs to be corrected to reflect the historic use. Therefore, it is requested that the below be amended to:

Place of Use:	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rng	County
			SESWNE	11	T6S	R59E	Carter

Maps were attached to the Motion to Amend showing the location of the point of diversion and place of use in the SESWNE of Section 11, Township 6 South, Range 59 Est, Carter County:



5. A map attached to the April 23, 1982 Statement of Claim showed the point of diversion and the place of use at the same location as the proposed amended point of diversion. The place of use legal land description is not being amended:



### PRINCIPLES AND CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

2. The proposed place of use legal land description amendment does not have a reasonable potential to adversely affect other water users and therefore does not require further notice as provided for in Section 85-2-233(6), MCA. The change does not constitute an expansion of the elements of the claim, and merely corrects the paper water right; the use of the water right on the ground has not changed.

### RECOMMENDATION

1. The place of use for claim 39F 175547-00 should be changed to the SESWNE of Section 11, Township 6 South, Range 59 Est, Carter County.

A Post Decree Abstract of Water Right Claim is served with the Report for review.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

#### **Service via USPS Mail:**

J & D Statham Real Estate, LLC  
14218 NE River Bend Dr.  
Battle Ground, WA 98604

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**LITTLE MISSOURI RIVER, ABOVE LITTLE BEAVER CREEK**  
**BASIN 39F**

**Water Right Number:** 39F 175547-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** J&D STATHAM REAL ESTATE LLC  
14218 NE RIVER BEND DR  
BATTLE GROUND, WA 98604 6655

**Priority Date:** DECEMBER 31, 1957

**Type of Historical Right:** FILED

**Purpose (use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**\*Source Name:** UNNAMED TRIBUTARY OF HAY CREEK

**Source Type:** SURFACE WATER

**\*Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESWNE	11	6S	59E	CARTER

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DAM

**Reservoir:** ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SESWNE	11	6S	59E	CARTER

**Diversion to Reservoir:** DIVERSION # 1

**Period of Use:** JANUARY 1 TO DECEMBER 31

**\*Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SESWNE	11	6S	59E	CARTER